

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

BERT D.,

*Plaintiff,*

v.

Case No. SA-22-CV-00271-JKP

CHRISTOPHER VILLA SR., CHRIS-  
TOPHER VILLA JR., TINA GARZA,  
DANIEL GARZA, ANTONIO GARZA,  
FRANK GOMEZ, SAPD, FIESTA  
GROCERIES, ANDYS UPHOLSTERY  
SHOP, CHRISSY GARZA, UNKNOWN  
DEFENDANTS, A-Z, CHRISSY TIRE  
SHOP,

*Defendants.*

**ORDER ACCEPTING REPORT AND RECOMMENDATION OF**  
**THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Magistrate Judge Henry J. Bemporad's Report and Recommendation in which he recommends this case be dismissed without prejudice due to Plaintiff's failure to pay the filing fee or failure to apply for *in forma pauperis* status and for failure to respond to the Court's Order to Show Cause. *ECF Nos. 4,5.*

In his Order to Show Cause, Judge Bemporad required Plaintiff to either pay the full filing fee or submit an application to proceed IFP accompanied by the affidavit required by § 1915 on or before May 31, 2022. *ECF No. 4.* Judge Bemporad also required Plaintiff to show cause why his complaint should not be dismissed under § 1915(e) by filing an amended complaint plainly stating a claim for relief against Defendants and specifying the relief requested and in-

cluding a short and plain statement of the grounds for federal court jurisdiction. *Id.* Judge Bemporad cautioned Plaintiff that failure to comply with the Show Cause Order could result in dismissal for failure to prosecute and for failure to comply with the orders of this Court. *Id.*

Plaintiff did not reply to Judge Bemporad's Show Cause Order and did not pay the filing fee or file an application to proceed IFP and supporting affidavit. Consequently, Judge Bemporad issued a Report and Recommendation that the case be dismissed without prejudice. Plaintiff did not file any objection to Judge Bemporad's Report and Recommendation, and the time for doing so expired. Instead, two days after the deadline to file objections, Plaintiff filed a Motion for Protective Order and an Application to Proceed *In Forma Pauperis*, which did not include the full affidavit to support the application and did not include a notary verification.

Any party who seeks review of all or a portion of a Magistrate Judge's Report and Recommendation must serve and file specific written objections within fourteen days after being served with a copy. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). If a party does not timely object to all or a portion of a Magistrate Judge's Report and Recommendation, the District Court will review the unobjected-to proposed findings and recommendations to determine whether they are clearly erroneous or contrary to law. *Johnson v. Sw. Research Inst.*, 210 F. Supp.3d 863, 864 (W.D. Tex. 2016)(citing *U.S. v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.)(per curiam), *cert. denied*, 492 U.S. 918 (1989)).

Consistent with § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2), the Court reviewed the subject Report and Recommendation entered by Magistrate Judge Bemporad for clear error on the face of the record. This Court finds no such clear error. Plaintiff did not submit a complete application and affidavit to be allowed to proceed *in forma pauperis*. Accordingly, the Court **ACCEPTS** Magistrate Judge Bemporad's findings and recommendation and **ADOPTS** the Report and Rec-

ommendation. For the reasons stated by Judge Bemporad, the case shall be DISMISSED WITHOUT PREJUDICE.

It is so ORDERED.  
SIGNED this 27th day of June, 2022.



JASON PULLIAM  
UNITED STATES DISTRICT JUDGE